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VIA ECF

Clerk of the Court
United States Court of Appeals
Second Circuit
40 Foley Square
New York, NY 10007

RE: Halberstam v. Global
16 CV 1563

Dear Sir or Madam:

I represent the plaintiff in the above matter. As a reply position statement, following the district court's May 5th order granting certification for interlocutory review, defendant timely petitioned the Second Circuit Court of Appeals for permission to appeal. Pursuant to Local Civil Rule 6.3, plaintiff timely filed a motion for reconsideration of the May 5th order granting certification for interlocutory review, rendering the May 5th order non-final.

As a preliminary matter, the Second Circuit does not currently have jurisdiction to review the petition for permission to appeal. Although, the defendant timely filed the petition for permission to appeal, plaintiff subsequently, timely filed a motion for reconsideration of the order that certified this case for interlocutory review. The motion for reconsideration is currently pending in the District Court. Because that motion for reconsideration is still pending, the petition seeking permission to appeal is suspended (at least temporally) for lack of appellate jurisdiction. For purposes of interlocutory review the filing of a motion for reconsideration automatically divests the Second Circuit of appellate jurisdiction to review the petition for permission to appeal.

The petition for permission to appeal filed with the Second Circuit is, in effect, suspended until the motion for reconsideration is disposed of, whereupon, the previously filed petition would either be effectively placed back under the jurisdiction of the Second Circuit or if reconsideration is granted and certification for interlocutory review is denied, then the petition for permission to appeal would be void *ab initio*. See generally *Beauvoir v. Israel*, 794 F.3d 244 (2d Cir. 2015) Fed. R. App. P. 4(a). Cf. Fed. R. App. P. 4(a)(4)(B)(i), Advisory Committee Notes to 1993 Amendment at Note to Paragraph a(4)

Thank you for the Court's consideration of the foregoing.

Yours faithfully,
/s/
Adam J. Fishbein

Cc. Counsel of record